

United States
Circuit Court of Appeals
For the Ninth Circuit.

GENERAL ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

C. A. BROWER, Trustee in Bankruptcy of
the Estate of ANDRUS-CUSHING
LIGHTING FIXTURE COMPANY,
a Corporation, Bankrupt,

Respondent.

In the Matter of ANDRUS-CUSHING LIGHTING
FIXTURE COMPANY, a Corporation,
Bankrupt.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of
Law, of a Certain Order of the United
States District Court for the West-
ern District of Washington,
Southern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

FRANK H. KELLEY, Esquire, #717 Tacoma Building, Tacoma, Washington, and

RALPH WOODS, Esquire, #717 Tacoma Building, Tacoma, Washington,

DOLPH, MALLORY, SIMON & GEARIN, Lawyers, Portland, Oregon,
Attorneys for Petitioner.

WALTER M. HARVEY, Esquire, #1307 National Realty Building, Tacoma, Washington,

G. C. NOLTE, Esquire, Tacoma Building, Tacoma, Washington,

Attorneys for C. A. Brower, Trustee in Bankruptcy of the Bankruptcy Estate of Andrus-Cushing Lighting Fixture Company. [2*]

In the United States District Court for the Western District of Washington, Southern Division.

No. 1398.

In the Matter of ANDRUS-CUSHING LIGHT-
ING FIXTURE CO.,

Bankrupt.

Stipulation for Record on Petition for Review.

IT IS HEREBY STIPULATED AND AGREED by and between counsel herein that the record on review in this matter shall constitute the following

*Page-number appearing at foot of page of original certified Record.

papers and none other, and that the Clerk in preparing the record shall omit all captions, endorsements, acceptances of service, verifications, etc. excepting file marks.

1. Petition of Banner Electric Company;
2. Objections to confirmation of sale, etc.;
3. Order confirming sale;
4. Petition for review of Referee's order;
5. Referee's certificate on review;
6. Order confirming Referee's decision;
7. Petition for review by U. S. Circuit Court of Appeals, and allowance;
8. This stipulation.

FRANK H. KELLEY and
RALPH WOODS,

Attorneys for Petitioner.

WALTER M. HARVEY,
Attorney for Trustee in Bankruptcy.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 2, 1914. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [3]

Petition [That Lamp Stock be Withheld from Sale, etc.].

Comes now the Banner Electric Works of the General Electric Company, a corporation, by Ralph Woods, its attorney, and respectfully shows to the Court:

I.

That at the time of the filing of the petition in bankruptcy in the above entitled proceedings, your

petitioner was the owner of lamp stock of the value of six hundred and nineteen and 73/100 (\$619.73) dollars, which said lamp stock is in the possession of the trustee in Bankruptcy and which stock has at all times been kept separate and segregated from the stock of the said bankrupt.

II.

For a complete list of the stock of your petitioner, reference is hereby made to the first report of the Trustee, on page seven.

WHEREFORE, your petitioner prays that said lamp stock be withheld from sale and upon a hearing the same be forthwith delivered to your petitioner.

BANNER ELECTRIC WORKS,
By RALPH WOODS,

Its Attorney.

[Endorsed]: "Filed this 8 day of October, 1913, at 10:00 A. M. R. F. Laffoon, Referee in Bankruptcy."

[4]

Objections to the Confirmation of the Sale of the Banner Electric Stock.

Comes now the Banner Electric Works of the General Electric Company, by Ralph Woods, and Frank H. Kelley, its attorneys, and objects to the confirmation of the sale of what is known as the Banner Electric stock, and shows to the Court as follows:

I.

That your petitioner has filed herewith claim for what is known as the Banner Electric stock; that notice was given to purchaser at the time of the sale; that no action was taken by the Court at said time.

II.

That no appraisalment was made of said goods and the property was sold without proper notice; that at the time of said sale the Referee states that the same would be sold subject to confirmation.

III.

Your petitioner further shows that said goods belonging to your petitioner were held by the bankrupt merely as agent for your petitioner; that what is known as the Banner Electric stock was at all times segregated and kept separate from the main stock of the said bankrupt.

IV.

That your petitioner at all times while said stock was in the store of the said bankrupt was insured against fire and against burglars and said insurance was paid by your petitioner. [5]

V.

That the taxes on the same were paid by your petitioner.

VI.

That the first report of the Trustee shows that the stock of your petitioner was kept separate and segregated from the main stock, and your petitioner hereby refers to the first report of the Trustee for correct list of said stock.

VII.

That the following is a copy of the contract entered into by your petitioner and the said bankrupt, to wit:

“APPOINTMENT OF AGENT.

INCANDESCENT LAMPS.

“The General Electric Company, a New York cor-

poration (hereinafter called the 'Manufacturer'), hereby through the General Manager of its Banner Electric Works, at Youngstown, Ohio, appoints Andrus-Cushing Lighting Fixture Company (hereinafter called the 'Agent'), an agent to sell for it its Banner incandescent lamps, manufactured under United States Letter Patent, of the types and classes hereinafter specified upon the terms and subject to the conditions herein set forth and said Agent hereby accepts the appointment, and agrees to comply with said terms and to perform all conditions hereof.

"1. The Agency hereby created shall continue for the period of one year from July 1, 1912, unless sooner terminated as herein provided.

"2. The Manufacturer agrees to maintain in the custody of the Agent, to be disposed of as herein provided, a stock of its Banner Gem (metalized filament), Mazda (Tungsten) and Tantalum patented incandescent lamps; all of the lamps in such consigned stock shall be and remain in the property of the Manufacturer until the lamps are sold, and the proceeds of all lamps sold shall be held for the benefit and for the account of the Manufacturer until fully accounted for as hereinafter provided. The quantity of lamps and the length of time they shall remain in stock is to be at all times determined by the Manufacturer; but its intent is to maintain the stock on an average basis of from 30 to 60 days' supply, as estimated by the Agent. All lamps shipped hereunder by or on behalf of the Manufacturer either to the Agent or upon his request during the continuance of this Agency, shall be subject to

the same terms, conditions and agreements as if shipped to said stock, whether or not so specified. The Agent shall return to the Manufacturer, at any time when directed by it, all or any part of the said lamps that have not been sold, and any duly authorized representative of the Manufacturer shall have access at all times during business hours to the place or places in which said lamps are stored. [6]

“3. The Agent is hereby authorized (a) to sell to anyone, lamps from said stock in broken package quantities at broken package prices, and in standard package quantities at standard package prices, and (b) to sell lamps from said stock to any purchaser under standard forms of contract made by the Manufacturer and under which the Agent may be given, by the Manufacturer, written authority to deliver lamps at the prices fixed in said contracts, and (c) to sell, at prices on the same basis as those in standard forms of contract, lamps from said stock to any purchaser, not under contract, for the purchaser's immediate use; but sales under this subdivision (c) may be made only on written permission from the Manufacturer first obtained in each instance. All sales shall be made only at such prices and upon such terms as may be established by the Manufacturer; the present prices and terms being contained in the schedules presented herewith, which are subject to change on written notice from the Manufacturer from time to time.

“Upon all bills and invoices for lamps sold by the Agent shall appear the words: ‘Agent for Banner Incandescent Lamps of General Electric Company.’

The Agent has no authority to sell or transfer or in any way dispose of such lamps, except as herein expressly provided, and shall not control, or attempt to control, the prices at which any purchaser shall sell any of such lamps. The due payment to the Manufacturer for all sales made hereunder by the Agent shall be and hereby is Guaranteed by said Agent.

“The Agent shall conform to the educational and engineering instructions of the Manufacturer, and shall advise with and instruct prospective purchasers as to the classes and types of lamps best suited to their several requirements in order to secure a maximum illumination for a minimum expenditure and shall conduct the business hereunder to the satisfaction of the Manufacturer.

“4. All of the Agent’s books and records relating to his transactions in connection with the sale and distribution of the Manufacturer’s lamps shall at all times during business hours be open to the inspection of any duly authorized representative of the Manufacturer.

“5. The Agent shall pay all expenses in the storage, cartage, transportation, handling and sale of lamps hereunder, and all expense incident thereto and to the accounting and collection of accounts thus created. The Agent shall be allowed as compensation for the performance of all obligations hereunder, the difference between the amount received from the sale of the lamps and their value on the basis of a discount of — per cent from list prices as at the time fixed by the Manufacturer. The Manufacturer agrees that if the Agent sells during the period of

this appointment, a quantity of lamps the value of which would entitle him to a higher basis of compensation, as shown in Schedules presented herewith, the Manufacturer will at once credit the Agent with an amount equal to the difference between the compensation he has been receiving and the compensation he then becomes entitled to.

“6. The Agent shall render to the Manufacturer, not later than the tenth of every month, a report, on forms provided by the Manufacturer, covering his sales of the Manufacturer’s lamps during the preceding calendar month.

“The Agent shall pay over to the Manufacturer, not later than the tenth of every month, an amount equal to the [7] total sales value of all lamps sold hereunder, less the compensation due the Agent, for which collections have been made by the Agent during the preceding calendar month, and a further amount equal to the total sales value less the compensation due the Agent, on all lamps sold by the Agent to customers whose accounts covering such lamps are, on the first of the month, past due, according to the Manufacturer’s standard terms of payment.

“If reports are forwarded as provided in this clause, and are accompanied by a remittance covering in full the lamps sold by the Agent during the preceding calendar month, whether or not such accounts have been collected, such remittance may be the total sales of the lamps sold, less the compensation due the Agent, and less 5 per cent of the amount so arrived at, which 5 per cent shall be allowed as an

additional compensation for such payment and service.

“7. The Agent shall, on or before the 15th day of January and July, make and forward to the Manufacturer, on forms provided by the Manufacturer, a complete itemized report or inventory of all of the Manufacturer’s lamps on hand at the close of business on the last day of the preceding calendar month and shall render a similar report within 15 days after the termination or expiration of this appointment with reference to all such lamps on hand at the date of such expiration or termination. At the time for rendering each such report, the Agent shall pay to the Manufacturer the value of all lamps lost from the aforesaid stock or damaged, on the basis of list prices, less a discount of 29 per cent.

“8. The Agency hereby created may be terminated by notice in writing to the Agent in the event that the Agent Shall be or become insolvent or in the event of a breach by the Agent of any of the terms or conditions of this appointment. The expiration or termination of this Agency for any reason shall be without prejudice to the rights of the Manufacturer against the Agent, and immediately upon any such expiration or termination the Agent shall deliver to the Manufacturer all lamps consigned hereunder and that remain unsold and shall fully perform all obligations of the Agent that then remain unfulfilled.

“This appointment is hereby signed for the General Electric Company, the Manufacturer, by the General Manager of its Banner Electric Works or his duly authorized representative located in the sales

office of its said works at Youngstown, Ohio.

“L. N. NORRIS,

“General Manager Banner Electric Works.

“Accepted:

“ANDRUS-CUSHING LIGHTING FIXTURE
COMPANY.

“Agent.”

(Verification.)

Filed this 15 day of Oct., 1913, 10 A. M. R. F.
Laffoon, Referee in Bankruptcy. [8]

Order [of Referee] Confirming Sale.

This cause coming on regularly to be heard on the 15th day of October, 1913, at the hour of 10 o'clock A. M. of said day, pursuant to the due and regular adjournment of the creditor's meeting held on the 11th day of October, 1913, upon the report of the trustee, of the sale of personal property of the bankrupt herein, and it appearing to the Court that due notice was given of the time and place of said sale as required by the laws of the United States and the order of this Court, and that said sale was conducted regularly in all respects, and that at said sale J. G. Parkhurst was the highest and best bidder for the personal property of said bankrupt and bid therefor the sum of \$3,600 in cash, the said property including all of the property of said bankrupt, except the book accounts and the personal property claimed by the Banner Electric Company as consigned goods, and
IT FURTHER APPEARING TO THE COURT,
that the said J. G. Parkhurst bid for the said prop-

erty claimed by the said Banner Electric Company as consigned goods, the sum of \$210.00, and that said bid was the highest and best bid therefor, and

This cause coming on further to be heard on said 15th day of October, 1913, upon the petition of the said Banner Electric Company, praying that the said consigned goods be by order of this Court, turned over to the possession of said Banner Electric Company as the property of said Banner Electric Company, the Court having heard the evidence presented in support of said petition and having heard the argument of counsel and being fully advised in the premises,

IT IS HEREBY ORDERED, that said petition of the said Banner Electric Company aforesaid be and the same is hereby [9] denied and overruled, to which order the said Banner Electric Company by its counsel duly excepted and its exception is allowed,

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED, that the sale of all of the personal property of said bankrupt corporation with the exception of the book accounts and the consigned goods aforesaid to J. G. Parkhurst for the sum of \$3,600.00 be and the same is hereby ratified, approved and confirmed and the trustee in bankruptcy herein, is hereby directed to forthwith deliver possession of said *personal* to the said John G. Parkhurst upon receiving from him the sum of \$3,600.00 in cash.

IT IS FURTHER HEREBY ORDERED THAT THE SALE OF THE CONSIGNED GOODS claimed by the Banner Electric Company to J. G.

Parkhurst for the sum of \$210.00 be and the same is hereby ratified, approved and confirmed, but the said trustee in bankruptcy is hereby directed to retain possession of said goods claimed by the said Banner Electric Company for the period of five days from and after the 15th day of October, 1913, which time is hereby allowed the said Banner Electric Company to file a petition for review before the district Judge of said District.

Done in open court this 15th day of October 1913.

R. F. LAFFOON,

Referee in Bankruptcy.

[Endorsed]: "Filed this 17 day of Oct., 1913, at 10:00 A. M. R. F. Laffoon, Referee in Bankruptcy."

[10]

Petition for Review of Referee's Order.

To the Honorable R. F. LAFFOON, Referee in Bankruptcy:

Comes now the Banner Electric Works of the General Electric Company and respectfully shows:

I.

That heretofore prior to the sale of the stock belonging to the said bankrupt, your petitioner filed a petition with the Referee asking for the return and the possession of about six hundred nineteen and 73/100 (\$619.73) Dollars worth of lamp stock belonging to your petitioner, which said stock was held by the bankrupt as agent, a copy of the contract of agency which is marked Trustee's Exhibit No. 1.

II.

That thereafter said stock was sold by the trustee

subject to the confirmation thereof for the sum of two hundred ten (\$210.00) dollars.

III.

That your petitioner objected to the confirmation thereof and reference is hereby made to the said petition.

IV.

That said sale of the trustee was confirmed by the Referee on the 15th day of October, 1913.

V.

That the Referee in Bankruptcy erred in the following manner:

1. In permitting a sale of the stock without an appraisalment.

2. In construing the contract of appointment of agent, Exhibit No. 1, as a conditional sale instead of a bailment, [11] and thereby confirming the sale and in ruling that such a contract, in order to protect the manufacturer, must be recorded with the Auditor within ten days after such appointment.

3. In refusing an order allowing your petitioner the immediate possession of said Banner Electric stock.

WHEREFORE, your petitioner, feeling aggrieved because of such orders, prays that the same may be reviewed as provided in the Bankruptcy Law of 1898 and General Order XXVII.

Dated this 15th day of October, 1913.

BANNER ELECTRIC WORKS OF THE
GENERAL ELECTRIC COMPANY,

Petitioner.

By RALPH WOODS,
Attorney for Petitioner.

“Filed this 15 of Oct., 1913, 2 P. M. R. F. Laffoon, Referee in Bankruptcy.” [12]

[Certificate of Referee on Petition for Review.]

To the Honorable EDWARD E. CUSHMAN, U. S.
District Judge.

I, R. F. Laffoon, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, an order a copy of which is annexed to the petition hereinafter referred to, was made and entered on the 17th day of October, A. D. 1913.

That, on the 15th day of October, 1913, the Banner Electric Works, a claimant in this cause, feeling aggrieved thereat, upon the ruling of the referee and in anticipation of the order, filed its petition for review of the aforesaid order herein, which was granted.

That a summary of the evidence on which such order was based is as follows: The claimant, the Banner Electric Works, by its petition claimed the return of certain lamp stock in the possession of the trustee of the value of \$619.73, to which petition the trustee filed objections and exceptions, to wit:

I.

That the transaction between the Banner Electric Company and the bankrupt was a sale of the said stock to the bankrupt corporation.

II.

That the transaction between the Banner Electric Company and the bankrupt is not an absolute sale

was a conditional sale and void as to creditors for the reason that the same was not recorded in the manner and form provided by the law of the State of Washington. [13]

III.

That the title of the said goods under the law and the facts in this case is in the trustee in bankruptcy for the benefit of all the creditors of the bankrupt.

IV.

That the Banner Electric Company has treated said transaction as a sale and has filed a general claim setting forth that it is a creditor to the extent of the purchase price of said goods, and that the said petitioner is now estopped from claiming that the title of the said property did not pass to the said trustee.

Upon the hearing of the petition on motion of counsel for the petitioner, the Banner Electric Company, was allowed to amend its proof of claim filed herein, in such manner as to exclude any of the lamp stock claimed in its petition, if its proof in fact included any of that stock, and so disposed of the trustee's fourth exception herein, and the hearing was had upon the trustee's exceptions 1, 2 and 3.

Upon the examination of Mr. Andrus, president of the bankrupt company, at page 6 of the transcript of the testimony, it appears that the Banner Electric Company filed its proof of claim herein, claiming \$1,399.00 in full of its account, and that at the same time its agent's monthly report for July 31, 1913, showed the bankrupt indebted to the Banner Electric Company in the sum of \$961.29, not including in that

sum the amount of stock on hand, which was something like \$400.00 in value.

Upon the examination Mr. Ackroyd, secretary and treasurer of the bankrupt corporation, testified, at pages 18, 19, 20 and 21, that he was the agent of petitioner, the Banner Electric [14] Works, independent of his position as a stockholder in, and an officer of the bankrupt company; that as such agent he kept in storage here in Tacoma, lamp stock of the said Banner Electric Company, and delivered from such warehouse stock to the bankrupt to be sold at retail, upon which he received a commission of 5%; that his position as such general agent was well understood by both the bankrupt corporation and the petitioner herein. Mr. Ackroyd also testified on page 23, that the stock on hand was not included in the proof of claim as filed by the claimant herein, Mr. Ackroyd further testified on page 26 of the transcript of testimony, that he held the Banner Electric Company's goods in the warehouse controlled by them. In answer to the following question, "Did you deliver the goods they were short of, or a case of goods?" He answered, "Anything they needed." Of course a lot of those lamps were required on jobs and on retail sales. "Whenever they were needed you let them have them?" Answer, "Yes." "Just as they needed?" "Yes."

The trustee in his first report, filed September 22, 1913, attaches an inventory of the lamp stock on hand in the store September 8, 1913, claimed by the Banner Electric Company at the invoice price of the value of \$619.73.

It is claimed that this lamp stock when in the store of the bankrupt for sale was kept separate and apart from the other goods in the house, and that separate accounts were kept of the sales of these goods as required in the contract between the Banner Electric Works and the bankrupt, which is in evidence as Trustee's Exhibit Number 1, but it does not appear that there was any greater degree of separation as between the Banner Electric stock and other stock than would naturally be the case with any other special line of goods. The said contract purports [15] to be one of agency and while it provides for the return of any unsold stock at any termination of the contract, whether it terminates by its own terms or from some act of the parties, yet it seems to me that its evident purpose was to enable the manufacturer to control the output of his mills and the disposition of his products, and that when his goods are put in the hands of his so-called agents for sale, that the sale is absolute so far as creditors are concerned, and that upon the termination of an agency as between the agent and the manufacturer, he could require the return of the unsold goods in accordance with his scheme of protecting and controlling his sales. The effect of this contract is to give the agent 60 days' credit, and ten days' further time in which to report sale of the goods actually disposed of, but there is nothing in the contract to prevent the said agent paying for all of the goods upon their receipt, but at the expiration of the 60 days plus 10 days the payment would constitute a sale of the goods and pass the title from the manufacturer. Section 8 of the said con-

tract provides that the agency may be terminated by notice in writing to the company in event that the agent shall be, or become insolvent.

It appears from the testimony of Mr. Ackroyd, and from the claims for unpaid salary filed by Mr. Ackroyd and the president, that their wages of \$30.00 per week was in arrears and had not been regularly paid them for quite a long period, and with other indebtedness against the bankrupt, which was well known to Mr. Ackroyd, which knowledge was sufficient to apprise the Banner Electric Company of the inability of the bankrupt to meet its obligations, but the petitioner took no steps to terminate the contract. [16]

Section 2 of the contract shows that it was the intention of the parties that the agent should have and maintain a 30 to 60 days' supply of stock as estimated by the agent, and under section 6 of the contract it was contemplated that the agent should settle every 30 days, upon the 10th of the month, and pay for all lamps that had been sold and collected for, and also to pay for the lamps that had been sold and had not been paid for for more than a month, which to my mind shows that it was expected in the making of said contract to the agency that the stock furnished the agent would be paid for by the agent within 60 days plus 10 days. This contract expires by its terms on the 8th day of July, 1913, and the adjudication in bankruptcy was had on the 14th day of August, 1913, no change having been made in the conduct of the business within that period.

It is my opinion that all of the lamp stock put into the store by the agent, Mr. Ackroyd, from the Ban-

ner Electric Company's warehouse was sold to the bankrupt, and there was no expectation or intention on the part of the said agent that any of it would be taken back by the Banner Electric Company. I think this case is similar to the case, *In re Graves & Labelle*, number 5030, decided by the Honorable Edward E. Cushman about June 27, 1913, and therefore sustained the exceptions filed by the trustee, and denied the application of the Banner Electric Company.

That the question presented on this review is: Whether or not the petitioner, the Banner Electric Company, is entitled to the possession of a certain stock of lamps now in the possession of the trustee in bankruptcy herein.

I hand up herewith for the information of the judge the following papers: [17]

1. Petition for review.
2. Order denying the application and confirming sale.
3. Petition for the delivery of the goods.
4. Objections to the confirmation of the sale.
5. Objections and exceptions of the trustee.
6. Trustee's first report.
7. Minutes of the meeting of October 11, 1913.
8. Transcript of the testimony taken September 10, 1913.
9. Transcript of the testimony taken October 15, 1913.
10. Trustee's exhibit number 1.
11. Petitioner's exhibit "A."

12. Petitioner's exhibit "B."

Dated October 18, 1913.

Respectfully submitted,

R. F. LAFFOON,

Referee in Bankruptcy.

[Endorsed]: "Filed this 18th day of Oct., 1913, 11:30 A. M. R. F. Laffoon, Referee in Bankruptcy."

"Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 18, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [18]

Order Confirming Referee's Decision.

This matter coming on on review of the Referee's decision, it is now ordered that the Referee's decision be and the same is hereby affirmed.

(January 12, 1914.) [19]

Stipulation [as to Rights of the Parties and as to Hearing and Determination of Petition for Revision by Appellate Court, etc.].

The respondent in the above-entitled cause having been served with a copy of said petition, due and legal service whereof is hereby acknowledged by said respondent, the parties hereto, by their respective solicitors, have agreed and stipulated together as follows:

IT IS AGREED AND STIPULATED that the rights of the parties hereto are determined by and rest wholly upon the writing set forth in the second paragraph of the said petition and upon the facts

found in the Referee's certificate and that said writing as therein set forth is a true and correct copy of the original between the General Electric Company and the Bankrupt Corporation, and that the same was duly executed by both parties to said writing.

IT IS FURTHER AGREED AND STIPULATED that the matter presented in said petition may be heard and determined by the Appellate Court as an interlocutory matter.

Nothing herein contained shall be held to preclude the respondent from calling in question the jurisdiction of the Appellate Court to hear and determine the question in the petition presented, either as to the subject matter thereof or as to the method adopted to present said question to said Court.

IT IS HEREBY FURTHER STIPULATED AND AGREED, that

WHEREAS, the petition for review in this matter filed in this Court on the 15th day of October, 1913, purports to be filed by "the Banner Electric Works of the General Electric Company," and is signed "Banner Electric Works of the General Electric Company, petitioner"; and

WHEREAS, the said phraseology "Banner Electric Works [20] of General Electric Company," was intended to mean that the General Electric Company filed said petition through its agent the Banner Electric Works.

NOW, THEREFORE, IT IS HEREBY AGREED, that the said petition may be considered amended so as to read, "Now comes the General Electric Company and respectfully shows," etc., and that the sig-

nature to said petition shall be considered as the signature of the General Electric Company, and the said petition shall have full force and effect as the act of the General Electric Company and be entitled in this court to the same consideration as if the said petition had been originally signed and presented by the General Electric Company.

Dated at Tacoma this 17th day of January, 1914.

FRANK H. KELLEY and

RALPH WOODS,

Attorneys for Petitioner.

WALTER M. HARVEY,

Attorney for Respondent, [21]

**Notice [of Filing of Petition for Review, etc., in
Appellate Court].**

To C. A. Brower, Trustee in Bankruptcy of the Andrus-Cushing Lighting Fixture Company, a Corporation, Bankrupt, and to Walter M. Harvey and G. C. Nolte, Esqs., His Attorneys:

You and each of you hereby are notified that on the — day of January, 1914, at twelve o'clock noon, we will file in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, a petition for review in the above-entitled cause, a copy of which petition is hereto attached as a part of this notice and that we will then ask to have the case docketed and

the necessary order made therein to have said case set down for hearing.

FRANK H. KELLEY,
RALPH WOODS,

Solicitors for Petitioner,
Suite 717-18-19 Tacoma Bldg., Tacoma, Washington.

DOLPH MALLORY,

SIMON & GEARIN,

Of Counsel for Petitioner.

We hereby accept service of the above notice this 17 day of January, 1914.

WALTER M. HARVEY,
G. C. NOLTE,

Attorneys for C. A. Brower, Trustee in Bankruptcy
of the Bankrupt Estate of Andrus-Cushing
Lighting Fixture Company, a Corporation.
[22]

Petition [for Revision].

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Now comes General Electric Company, a corporation, petitioner in the above-entitled cause, and respectfully represents to the Court:

I.

On or about August 13, 1913, the Andrus-Cushing Lighting Fixture Company, a corporation, was in possession of certain electric incandescent lamps of the value of six hundred nineteen 75/100 (\$619.75) dollars, under and by virtue of a writing then in force

and effect between the parties, and in words and figures as follows:

“APPOINTMENT OF AGENT
INCANDESCENT LAMPS.”

“The General Electric Company, a New York Corporation (hereinafter called the ‘Manufacturer’), hereby, through the General Manager of its Banner Electric Works, at Youngstown, Ohio, appoints Andrus-Cushing Ltg. Fixt. Co., Tacoma, Wash. (hereinafter called the ‘Agent’), an agent to sell for it its Banner incandescent lamps, manufactured under United States Letters Patent, of the types and classes hereinafter specified, upon the term and subject to the conditions herein set forth, and said agent hereby accepts the appointment, and agrees to comply with said terms and to perform all conditions hereof.

1. The agency hereby created shall continue for the period of one year from July 8th, 1912, unless sooner terminated as herein provided.

2. The manufacturer agrees to maintain in the custody of the Agent, to be disposed of as herein provided, a stock of its Banner Gem (metalized filament), Mazda (Tungsten) and Tantalum patented incandescent lamps; all of the lamps in such consigned stock shall be and remain the property of the Manufacturer until the lamps are sold, and the proceeds of all lamps sold shall be held for the benefit and for the account of the Manufacturer until fully accounted for as hereinafter provided. The quantity of lamps and the length of time they shall remain in stock is to be at all times determined by the

Manufacturer; but its intent is to maintain the stock on an average basis of from 30 to 60 days' supply, as estimated by the Agent. All lamps shipped hereunder by or on behalf of the Manufacturer either to the Agent or [23] upon his request during the continuance of this Agency, shall be subject to the same terms, conditions and agreements as if shipped to said stock, whether or not so specified. The Agent shall return to the Manufacturer, at any time when directed by it, all or any part of the said lamps that have not been sold, and any duly authorized representative of the Manufacturer shall have access at all times during business hours to the place or places in which said lamps are stored.

3. The Agent is hereby authorized (a) to sell to anyone, lamps from said stock in broken package quantities at broken package prices, and in standard package quantities at standard package prices, and (b) to sell lamps from said stock to any purchaser under standard forms of contract made by the Manufacturer and under which the Agent may be given, by the Manufacturer, written authority to deliver lamps at the prices fixed in said contracts, and (c) to sell, at prices on the same basis as those in standard forms of contract, lamps from said stock to any purchaser, not under contract, for the purchaser's immediate use; but sales under this subdivision (c) may be made only on written permission from the Manufacturer first obtained in each instance. All sales shall be made only at such prices and upon such terms as may be established by the Manufacturer; the present prices and terms being contained in the

schedules presented herewith, which are subject to change on written notice from the Manufacturer from time to time.

Upon all bills and invoices for lamps sold by the Agent shall appear the words: 'Agent for Banner Incandescent Lamps of General Electric Company.' The Agent has no authority to sell or transfer or in any way dispose of such lamps, except as herein expressly provided, and shall not control, or attempt to control, the prices at which any purchaser shall sell any of such lamps. The due payment to the Manufacturer for all sales made hereunder by the Agent shall be and hereby is guaranteed by said Agent.

The Agent shall conform to the educational and engineering instructions of the Manufacturer, and shall advise with and instruct prospective purchasers as to the classes and types of lamps best suited to their several requirements in order to secure a maximum illumination for a minimum expenditure, and shall conduct the business hereunder to the satisfaction of the Manufacturer.

4. All of the Agent's books and records relating to his transactions in connection with the sale and distribution of the Manufacturer's lamps shall at all times during business hours be open to the inspection of any duly authorized representative of the Manufacturer.

5. The Agent shall pay all expenses in the storage, cartage, transportation, handling and sale of lamps hereunder, and all expense incident thereto and to the accounting and collection of accounts thus

created. The Agent shall be allowed as compensation for the performance of all obligations hereunder, the difference between the amount received from the sale of the lamps and their value on the basis of a discount of 29 per cent from list prices as at the time fixed by the Manufacturer. The Manufacturer agrees that if the Agent sells, during the period of this appointment, a quantity of lamps the value of which would entitled him to a higher basis of compensation, as shown in schedules presented herewith, the Manufacturer will at once credit the Agent with an amount equal to the difference between the compensation he has been receiving and the compensation he then [24] becomes entitled to.

6. The Agent shall render to the Manufacturer, not later than the tenth of every month, a report, on forms provided by the Manufacturer, covering his sales of the Manufacturer's lamps during the preceding calendar month.

The Agent shall pay over to the Manufacturer, not later than the tenth of every month, an amount equal to the total sales value of all lamps sold hereunder, less the compensation due the Agent, for which collections have been made by the Agent during the preceding calendar month, and a further amount equal to the total sales value less the compensation due the Agent, on all lamps sold by the Agent to customers whose accounts covering such lamps are, on the first of the month, past due, according to the Manufacturer's standard terms of payment.

If reports are forwarded as provided in this clause,

and are accompanied by a remittance covering in full the lamps sold by the Agent during the preceding calendar month, whether or not such accounts have been collected, such remittance may be the total sales value of the lamps sold, less the compensation due the Agent, and less 5 per cent of the amount so arrived at, which 5 per cent shall be allowed as an additional compensation for such payment and service.

7. The Agent shall, on or before the 15th day of January and July, make and forward to the Manufacturer, a complete itemized report or inventory of all of the Manufacturer's lamps on hand at the close of business on the last day of the preceding calendar month, and shall render a similar report within 15 days after the termination or expiration of this appointment with reference to all such lamps on hand at the date of such expiration or termination. At the time for rendering each such report, the Agent shall pay to the Manufacturer the value of all lamps lost from the aforesaid stock or damaged, on the basis of list prices, less a discount of 29 per cent.

8. The Agency hereby created may be terminated by notice in writing to the Agent in the event that the Agent shall be or become insolvent or in the event of a breach by the Agent of any of the terms or conditions of this appointment. The expiration or termination of this Agency for any reason shall be without prejudice to the rights of the Manufacturer against the Agent, and immediately upon any such expiration or termination the Agent shall deliver to the Manufacturer all lamps consigned here-

under and that remain unsold and shall fully perform all obligations of the Agent that then remain unfulfilled.

This appointment is hereby signed for the General Electric Company, the Manufacturer, by the General Manager of its Banner Electric Works or his duly authorized representative located in the sales office of its said works at Youngstown, Ohio.

(Signed) N. L. NORRIS,

General Manager Banner Electric Works.

Accepted:

(Signed) ANDRUS-CUSHING LTG. FIX-
TURE CO.,

F. L. CUSHING, Tr.,
Agent."

II.

On the said August 13, 1913, said Andrus-Cushing Lighting [25] Fixture Company filed its voluntary petition in bankruptcy, and thereafter in due course C. A. Brower, respondent herein, was duly qualified as the trustee of the estate of said bankrupt corporation, and as such came into the possession of the electric lamps aforesaid.

III.

Thereafter your petitioner in due course filed its petition before the Referee in Bankruptcy for the District Court of the United States for the Western District of Washington, holding terms at Tacoma, in which said District the said bankrupt corporation was domiciled at the time of the filing of the petition in bankruptcy, wherein your petitioner, having made due proof of the writing hereinbefore set forth,

prayed that the said Referee in Bankruptcy be ordered and directed to deliver to the petitioner the possession of the electric lamps aforesaid, which matter was duly heard by the said Referee, and upon said hearing said Referee made an order in words and figures as follows:

“In the District Court of the United States for the Western Division of Washington, Southern Division.

In the Matter of ANDRUS-CUSHING LIGHTING
FIXTURE COMPANY, a Corporation,
Bankrupt.

Order Confirming Sale.

“This cause coming on regularly to be heard on the 15th day of October, 1913, at the hour of 10 o'clock A. M. of said day, pursuant to the due and regular adjournment of the creditor's meeting held on the 11th day of October, 1913, upon the report of the trustee, of the sale of personal property of the bankrupt herein, and

It further appearing to the Court that due notice was given of the time and place of said sale as required by the laws of the United States and the order of this Court, and that said sale was conducted regularly in all respects, and that at said sale J. G. Parkhurst was the highest and best bidder for the personal property of said bankrupt and bid therefore the sum of \$3,600 in cash, the said property including all of the property of said bankrupt, except the book accounts and the [26] personal property claimed by the Banner Electric Company as consigned goods, and

It further appearing to the Court, that the said J. G. Parkhurst bid for the said property claimed by the said Banner Electric Company as consigned goods, the sum of \$210.00 and that said bid was the highest and best bid therefore, and

This cause coming on further to be heard on said 15th day of October, 1913, upon the petition of the said Banner Electric Company, praying that the said consigned goods be by order of this Court turned over to the possession of said Banner Electric Company as the property of said Banner Electric Company, the Court having heard the evidence presented in support of said petition and having heard the argument of counsel and being fully advised in the premises.

IT IS HEREBY ORDERED, that said petition of the said Banner Electric Company aforesaid be and the same is hereby denied and overruled, to which order the said Banner Electric Company by its counsel duly excepted and its exception is allowed.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED, that the sale of all the personal property of said bankrupt corporation, with the exception of the book accounts and the consigned goods aforesaid to J. G. Parkhurst for the sum of \$3,600.00, be and the same is hereby ratified, approved and confirmed and the Trustee in Bankruptcy herein is hereby directed to forthwith deliver possession of said *personal* to the said John G. Parkhurst upon receiving from him the sum of \$3,600.00 in cash.

IT IS FURTHER HEREBY ORDERED that the sale of the consigned goods, claimed by the Banner Electric Company, to J. G. Parkhurst for the sum of \$210.00 be and the same is hereby ratified, approved and confirmed, but the said Trustee in Bankruptcy is hereby directed to retain possession of said goods claimed by the said Banner Electric Company for the period of five days from and after the 15th day of October, 1913, which time is hereby allowed the said Banner Electric Company to file a petition for review before the District Judge of said District.

Done in open court this 15th day of October, 1913.

R. F. LAFFOON,

Referee in Bankruptcy."

IV.

Thereafter on October 15, 1913, your petitioner duly made and filed its petition to the said District Court for a review of the order aforesaid of the Referee, and said petition and the Referee's certificate of facts found thereon coming on regularly to be heard January 12, 1914; and after due hearing said District Court made and entered its order affirming the order aforesaid of the Referee. [27]

V.

Your petitioner respectfully represents to this Court that the order of the Referee aforesaid and the order of the District aforesaid, affirming the order of the Referee, is erroneous in law, in that it deprives your petitioner of its property, the lamps aforesaid, compels your petitioner against its wish and in violation of the writing between the parties to become a creditor of the bankrupt corporation,

and applies the property aforesaid of your petitioner to the satisfaction *pro rata* of the general claims of creditors of said bankrupt corporation.

WHEREFORE, your petitioner prays that by virtue of Section 24B, Chapter 4, of the Act of July 1, 1898, and to the exercise of its superintending and advisory jurisdiction in matters of law of the proceedings of the several inferior Courts of Bankruptcy, this Court will take and consider the matter aforesaid in this petition set forth, and will reverse the orders aforesaid of the said Referee and of the said District Court, and will, by its decree, determine that the petitioner is the owner of the property aforesaid and entitled to its possession as against the bankrupt and the Trustee in Bankruptcy of the bankrupt's estate and as against the creditors of the bankrupt, and otherwise for justice as between the parties due as the equity may seem meet and right.

FRANK H. KELLEY,

RALPH WOODS,

Solicitors for Petitioner.

Suite 117-18-19 Tacoma Bldg., Tacoma, Washington.

DOLPH MALLORY,

SIMON & GEARIN,

Of Counsel for Petitioner.

(Verification.)

"Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 2, 1914. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [28]

Order [Allowing Petition for Revision].

The petition of the General Electric Company, a corporation, to the United States Circuit Court of Appeals for the Ninth Circuit, in which petition C. A. Brower, Trustee of the bankrupt estate, of the Andrus-Cushing Lighting Fixture Company, a corporation, appears as respondent, together with the stipulation of the solicitors of the parties, having been presented to this Court for allowance, said petition hereby is allowed.

Done in open court at Tacoma, this 2d day of February, 1914.

EDWARD E. CUSHMAN,
Judge of said Court.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 2, 1914. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [29]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

United States of America,
Western District of Washington,—ss.

I, FRANK L. CROSBY, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing and attached are a true and correct copy of the record and proceedings in the case of ANDRUS-CUSHING LIGHTING FIXTURE COMPANY, Bankrupt, No. 1398, as required by stipulation of

counsel filed in said matter, as the originals thereof appear on file in said court, at the City of Tacoma, in said District.

I hereby certify that the cost of preparing and certifying the foregoing record is the sum of Fifteen Dollars and Ninety Cents (\$15.90), which sum has been paid to me by attorneys for petitioner herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at the city of Tacoma, in said District, this fourth day of February, A. D. 1914.

[Seal]

FRANK L. CROSBY,
Clerk.

By E. C. Ellington,
Deputy Clerk.

[Endorsed]: No. 2375. United States Circuit Court of Appeals for the Ninth Circuit. General Electric Company, a Corporation, Petitioner, vs. C. A. Brower, Trustee in Bankruptcy of the Estate of Andrus-Cushing Lighting Fixture Company, a Corporation, Bankrupt, Respondent. In the Matter of Andrus-Cushing Lighting Fixture Company, a Corporation, Bankrupt. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of

a Certain Order of the United States District Court
for the Western District of Washington, Southern
Division.

Received February 6, 1914.

F. D. MONCKTON,
Clerk.

Filed February 6, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.